

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

BRYANT SMITH,

Plaintiff,

-against-

9:04-CV-0074  
(LEK/DRH)

SGT. HASH, Corrections Officer at  
Oneida Correctional Facility, *et al.*,

Defendant.

---

**DECISION AND ORDER**

This matter comes before the Court following a Report-Recommendation filed on September 6, 2006, by the Honorable David R. Homer, United States Magistrate Judge, pursuant to 28 U.S.C. § 636(b) and L.R. 72.3(c) of the Northern District of New York. Report-Rec. (Dkt. No. 21).

Within ten days, excluding weekends and holidays, after a party has been served with a copy of a Magistrate Judge's Report-Recommendation, the party "may serve and file specific, written objections to the proposed findings and recommendations," Fed. R. Civ. P. 72(b), in compliance with L.R. 72.1. In the interval of at least fifteen days since the Magistrate Judge filed the subject Report-Recommendation, no objections to it have been raised. Furthermore, after examining the record, the Court has determined that the Report-Recommendation is not subject to attack for plain error or manifest injustice.<sup>1</sup>

---

<sup>1</sup> The Court, however, notes several things, which do not otherwise have a material impact upon the Report-Recommendation. First, on page 6 of the Report citation is made to Sims v. Artuz (where the Report cites to "Id. at 262"). Report-Rec. (Dkt. No. 21) at 6. However, the citation is actually to Blyden v. Mancusi, 186 F.3d 252, 262 (2d Cir. 1999), which is cited earlier on page 6 of the Report. Second, the cases of Dawes v. Walker, 239 F.3d 489 (2d Cir. 2001), Report-Rec. (Dkt. No. 21) at 10, and Morales v. Mackalm, 278 F.3d 126 (2d Cir. 2002), Report-Rec. (Dkt. No. 21) at

Accordingly, it is hereby

**ORDERED**, that the Report-Recommendation (Dkt. No. 21) is **APPROVED** and **ADOPTED** in its **ENTIRETY**; and it is further

**ORDERED**, that Defendants' Motion for summary judgment (Dkt. No. 17) is **GRANTED** as to Defendants Hash, Sipley, and Noble on all claims; and it is further

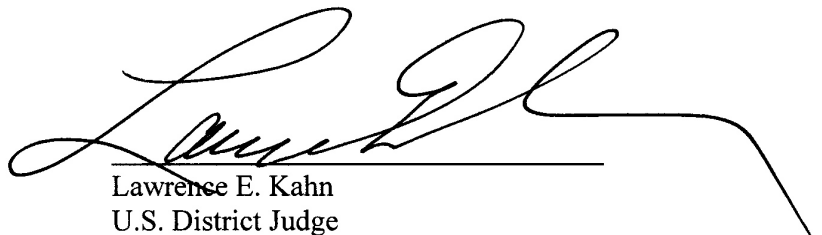
**ORDERED**, that the Complaint is **DISMISSED WITHOUT PREJUDICE** as to Defendant Metzler; and it is further

**ORDERED**, that this matter is **TERMINATED IN ITS ENTIRETY** as to all Defendants and all claims; and it is further

**ORDERED**, that the Clerk serve a copy of this Order on all parties.

**IT IS SO ORDERED.**

DATED: September 28, 2006  
Albany, New York



Lawrence E. Kahn  
U.S. District Judge

---

11, were overruled on grounds other than those for which they were cited by Judge Homer.